



CITY OF BURBANK  
PURCHASING DIVISION  
301 EAST OLIVE AVENUE P.O.BOX 6459  
BURBANK, CALIFORNIA 91510-6459  
(818) 238-5466

01-MAR-12

STANDARD PURCHASE ORDER NO

1304, REV 0

Page 1 of 1

THE ABOVE NUMBER MUST APPEAR ON ALL  
INVOICES, SHIPPING PAPERS, PACKAGES, AND  
CORRESPONDENCE

PLEASE DELIVER TO:  
COMMUNITY DEVELOPMENT  
DEPT  
150 N THIRD ST  
Burbank, CA 91502-1232  
United States

DELIVERY DUE

F.O.B : Delivery

TERMS: Net 30

VENDOR NAME AND ADDRESS:

RTKL ASSOCIATES INC  
333 S HOPE ST, SUITE C-200  
LOS ANGELES, CA 90071  
United States

REQ # 25621	REQUESTED BY : COUGHENOUR, JEANNIE M	VENDOR # 4358	PHONE # (213) 627-7373		
ITEM	DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL AMOUNT
<p>COMMENCEMENT DATE: APRIL 1, 2011      COMPLETION DATE: APRIL 1, 2012</p> <p>TO PROVIDE PLANNING AND ARCHITECTURAL DESIGN SERVICES FOR THE LUNDIGAN YOUTH CENTER, FOR THE CITY OF BURBANK, COMMUNITY DEVELOPEMENT DEPARTMENT, PER THE PROFESSIONAL SERVICE AGREEMENT DATED FEBRUARY 24, 2012.</p>					
1	370.PR21A.70019.0000.20142 PLANNING & ARCHITECTURAL DESIGN SPECIFIC TO LUNDIGAN YOUTH CENTER		Dollar		15,446.81
<p>INSURANCE: VENDOR SHALL MAINTAIN CURRENT, VALID, COMMERCIAL GENERAL LIABILITY WITH SEPARATE ADDITIONAL INSURED ENDORSEMENT, AUTO LIABILITY, WORKERS' COMPENSATION, AND ERRORS AND OMISSIONS INSURANCE DOCUMENTS ON FILE IN THE CITY OF BURBANK PURCHASING OFFICE DURING THE EFFECTIVE DATES OF THIS ORDER. INSURANCE DOCUMENTS SHALL BE APPROVED BY THE BURBANK CITY ATTORNEY'S OFFICE BEFORE THEY ARE CONSIDERED VALID. FAILURE TO PROVIDE SUCH INSURANCE WHEN REQUESTED OR UPON RENEWAL SHALL CAUSE THE CITY TO STOP WORK IN PROGRESS AND WITHHOLD PAYMENTS UNTIL THE INSURANCE IS BROUGHT INTO COMPLIANCE.</p>					
REFER QUESTIONS TO (818) 238-5466		BUYER NAME: A GARCIA VENDOR CONTACT:		TOTAL \$15,446.81	

NOTICE: This order is subject to the terms and conditions shown of the face and reverse side hereof.  
The City is exempt from Federal Excise Tax.

MAIL INVOICE IN DUPLICATE TO  
COMMUNITY DEVELOPMENT DEPT  
150 N THIRD ST  
Burbank, CA 91502-1232  
United States

CITY OF BURBANK, CALIFORNIA

PURCHASING MANAGER

## TERMS AND CONDITIONS

Acceptance of order constitutes acceptance of the terms, prices, delivery instructions, specifications and conditions stated therein, including the following:

Vendor agrees to save the City harmless from any liability arising from the misuse or infringement of any patented or copyrighted articles sold hereunder.

City reserves the right to cancel all or any portion of this order if not filled within the time specified.

City also reserves the right to correct typographical errors wherever they may appear in this order.

Municipalities are exempt from Federal Excise and Transportation Taxes. Prices shall **EXCLUDE** Federal Taxes. Exemption Certificate will be furnished on request.

Transportation charges must be prepaid by vendor on all purchases where the FOB point is other than Burbank, California. These charges may be added to vendor's invoice and shall be shown as a separate item.

No charges for transportation, containers, packing, etc., will be allowed vendor unless so specified in this order.

In case of default by the vendor, the City may procure the articles or services from other sources and may default from unpaid balance due the vendor or may collect against the bond or surety, if any, for excess costs so paid. The prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Reasonable attorney's fee shall be awarded City in the event suit is filed and City recovers excess costs.

Cost of inspection on deliveries or offers for delivery, which do not meet specifications, will be the account of the vendor.

Vendor will not be held liable for failure or delay in the fulfillment of this order if hindered or prevented by fire, strikes, or Acts of God.

This order, attachment, and/or documents cited in this order represent the entire Agreement between the City and the Vendor.

The laws of the State of California shall govern this transaction.

## PROFESSIONAL SERVICES AGREEMENT

**DATE:** February 24, 2012

**PARTIES:** "CLIENT"

THE CITY OF BURBANK, a municipal corporation

Designated Official: Name: Greg Herrmann  
Title: Community Development Director  
Telephone: 818.238.5176

Mailing Address: 275 E. Olive Avenue  
P. O. Box 6459  
Burbank, CA 91510

THE "CONSULTANT"

**RTKL ASSOCIATES, INC.**

Representative: Name: Nate Cherry  
Title: Vice-President  
Telephone: 213.633.6000  
Email: [ncherry@rtkl.com](mailto:ncherry@rtkl.com)

Mailing Address: 333 S. Hope St. Suite C-200  
Los Angeles, CA 90071

**TERM:** Commencement date: April 1, 2011  
Completion date: April 1, 2012

**COST OF SERVICE:** not to exceed \$15,446.81

THIS AGREEMENT MUST BE FIRST EXECUTED BY THE CONSULTANT OR ITS REPRESENTATIVE AND APPROVED AS TO FORM BY THE CITY ATTORNEY BEFORE THE AGREEMENT MAY BE EXECUTED ON BEHALF OF THE CITY OF BURBANK.

REQUESTS FOR A WAIVER OF TERMS MUST BE IN WRITING AND PRESENTED TO THE CITY ATTORNEY'S OFFICE AT THE TIME THIS AGREEMENT IS DELIVERED TO THE CITY ATTORNEY'S OFFICE FOR REVIEW AND APPROVAL AS TO FORM.

**1.0            Services.** Consultant, as an independent contractor, agrees to perform during the term of this Agreement, each and every service set forth on the "Scope of Services" attached to this Agreement as Exhibit "A." The initiation of service by the Consultant will commence upon receipt of a written notice from the Designated Official authorizing Consultant to proceed, and only to the extent of such authorization. The services of the Consultant shall include the making of all investigations, studies, and analysis required by the conditions involved in each request of the Designated Official.

**2.0            Compensation.** The Client shall pay for the services of Consultant either on a time-and-material basis or on a fixed-price basis, depending upon the agreed cost of the applicable service as indicated on the "Schedule of Compensation" which is set forth in Exhibit "B." No payment for expenses or labor shall be paid by Client unless it is related to a service, which is referred to in the Scope of Services. The cost of service designated on the first page of this Agreement may be increased by 10% of the original Cost of Services or \$10,000, whichever is less with the prior written approval of the Designated Official. Any additional increase in the cost of service designated on the first page of this Agreement must have the prior written approval and authorization of the City Manager.

**3.0            Payment.** If the service specified in the Scope of Services is to be paid for on a fixed-price basis, then Client shall pay for services of Consultant the total fixed price according to the progress payment schedule established in the Schedule of Compensation. If, however, payment is to be made on a time-and-material basis, then Consultant shall, at the end of each calendar month in which services are performed or expenses are incurred under this Agreement, and prior to the tenth day of the following month, submit to the Client a verified invoice prepared in the manner prescribed by the Client and the Designated Official. Client's payment to Consultant shall be made within thirty (30) days of either the date of completion of each phase as set forth in the progress schedule if Consultant's Compensation is a fixed price, or the date of Consultant's invoice if compensation is calculated on a time-and-material basis, whichever is applicable.

**4.0            Standard of Skill.** Consultant, and Consultant's staff, if any, is skilled in the professional calling necessary to perform the work agreed to be done pursuant to this Agreement. Client relies upon the skill of the Consultant, and Consultant's staff, if any, to do and perform such work in a skillful manner, and Consultant agrees to thus perform Consultant's work. The acceptance of Consultant's work by the Client shall not operate as a release of the Consultant from such standard of care and workmanship.

**5.0            Independent Contractor.** Consultant is retained and employed by Client only to the extent set forth in this Agreement, and the Consultant's relationship to the Client is that of an independent contractor. Consultant shall be free to dispose of all portions of Consultant's time and activities which Consultant is not obligated to devote to the Client in such a manner and to such persons, firms, or corporations as the Consultant sees fit except as expressly provided in this Agreement. Consultant shall not be considered to have the status of an employee under this Agreement or be entitled to participate in any insurance, medical care, vacation, sick leave, or other benefits provided for Client's officers or employees.

**6.0 Indemnification.** Consultant shall take all reasonable precautions to prevent the occurrence of any injury, including death, to any person or any damage to any property arising out of the acts or omissions of the Consultant, its agents, employees, or subcontractors.

Consultant shall defend, indemnify and hold harmless the Client and its officers, agents, and employees, against any claim for personal injury, property damage, or wrongful death arising out of or as the result of any work by Consultant or the employees, agents, or subcontractors of the Consultant, in the performance of this Agreement.

**7.0 Termination of Agreement.** Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party thirty (30) days notice in writing. This Agreement may be extended beyond the term only by the written agreement of both parties prior to the expiration of the term of the Agreement.

**8.0 Safety Requirement.** All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. The Client reserves the right to issue restraint or cease and desist orders to the Consultant when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The Consultant shall maintain the work sites free of hazards to persons and property resulting from its operations. Any hazardous condition noted by the Consultant, which is not the result of his operations, shall immediately be reported to the Client.

**9.0 Insurance.** Consultant shall maintain the following insurance coverage throughout the term of this Agreement, and upon request Consultant shall show Client evidence of such coverage:

**9.1 Automobile Insurance.** If Consultant uses, or intends to use, a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.

Waiver Approved:

\_\_\_\_\_  
City Attorney or designee

\_\_\_\_\_  
Management Services Director or designee

**9.2 Workers' Compensation Insurance.** Workers' Compensation Insurance and Employer's Liability Insurance on any employees of Consultant performing services under this Agreement. **This insurance cannot be waived, but does not apply if Consultant is a sole proprietor and provides a written statement to that effect.**

**9.3 General Liability and Property Damage Insurance.** Unless expressly waived and such waiver is evidenced by the signature of the requisite officers of the client designated in this paragraph, Consultant shall maintain general liability insurance and property

damage insurance in the amount of \$1,000,000.00 combined single limit. When this coverage is required, the Client shall be named as an additional insured on a separate endorsement to the insurance policy. The endorsement shall require the insurance company to provide Client a minimum of ten (10) days notice of the cancellation of the policy.

Waiver Approved:

\_\_\_\_\_  
City Attorney or designee

\_\_\_\_\_  
Management Services Director or designee

**9.4 Errors and Omissions Insurance.** Errors and Omissions Insurance which includes coverage for professional malpractice, in the amount of \$1,000,000.00. The policy shall provide for coverage of all claims occurring during the term of the policy notwithstanding the fact that the claim may be asserted subsequent to the expiration of the policy for a minimum period of three (3) years.

Waiver Approved:

\_\_\_\_\_  
City Attorney or designee

\_\_\_\_\_  
Management Services Director or designee

#### **10.0 Miscellaneous Insurance Requirements.**

**10.1 Recovery from Consultant's Insurance.** Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Consultant shall look solely to its insurance for recovery.

**10.2 Failure to Secure.** If Consultant at any time during the term of this Agreement, should fail to secure or maintain any insurance required under this Agreement, the Client shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the cost of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. Such costs can be assessed by deducting such costs from any amounts due and payable to the Consultant as compensation under the terms of this Agreement.

**10.3 Additional Insured.** The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as an additional insured and an additional insured named under this Agreement shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to the Client primarily, and to the Consultant secondarily, if necessary.



**10.4 Evidence of Insurance.** If requested by Client, Consultant shall furnish Certificates of Insurance evidencing the required coverages or the original of the insurance policies for review by the Client or the Designated Official.

**11.0 Work Product.**

**11.1 Deliverables.** Consultant shall deliver to the Client the studies, plans, specifications, or other documents as are identified in the Scope of Services; and Consultant shall, upon completion of all work, submit to the Client all information developed in the course of the Consultant's services. Consultant shall, in such time and in such form as the Client may require, furnish reports concerning the status of services required under this Agreement. Consultant shall, upon request by Client and upon completion or termination of this Agreement, deliver to the Client all material furnished to Consultant by the Client.

**11.2 Ownership.** Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Consultant pursuant to or in connection with this Agreement shall be the exclusive property of the Client.

**11.3 Confidentiality..** Consultant may be granted access to information that is exempt from disclosure to the public (Government Code Section 6254 and 6254.16) and may contain "trade secrets" (see Government Code Section 6254.7) when it is necessary for Consultant to perform its obligations pursuant to this Agreement. If Consultant is granted such access to confidential information, Consultant shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

Consultant shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to Consultant by the Client or other information to which the Consultant has had access during the term of this Agreement without the prior written approval of the Designated Official during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

**11.4 Records.** Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the Client or the Designated Official. The Consultant shall maintain adequate records on services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide access to the Designated Official or his designees at all proper times to such books and records, and gives the Designated Official or his designees the right to examine and audit such books and records and to make transcripts as necessary, and to allow inspection of all work, data, documents, proceedings, and activities related to this Agreement.

**12.0 Assignment.** This Agreement is personal to the Consultant. Any attempt at assignment by the Consultant shall be void unless approved in writing by the Designated Official. Consultant's services pursuant to this Agreement shall be provided by the Representative or directly under the supervision of the Representative and Consultant shall not assign another to supervise the

Consultant's performance of this Agreement without the prior written approval of the Client, by and through the Designated Official.

### **13.0 Miscellaneous Terms.**

**13.1 Nuisance.** Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

**13.2 Permits and Licenses.** Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

**13.3 Conflict of Interest.** Consultant agrees to be familiar with and comply with all applicable federal, state, and local conflict of interest laws.

**13.4 Waiver.** A waiver by the Client of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

**13.5 Notices.** Any notice required by this Agreement to be given in writing to the persons, at the addresses specified on the first page of this Agreement. Either party may change the specified person or address at which it is to receive notices by so advising the other party in writing.

**13.6 Mediation.** The parties agree to submit all claims, disputes or other matters in question between the parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation.

**13.7 Cost of Litigation.** If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses in such amount as the court may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

**13.8 Severability.** If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local governmental having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

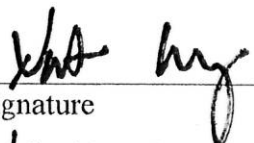
**13.9 Governing Law.** The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.



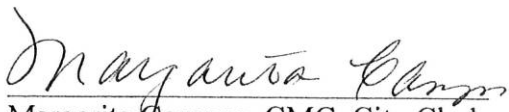
**13.10 Integrated Contract.** This Agreement represents the entire Agreement between the Client and the Consultant. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. In the event an inconsistency arises between any exhibit and any term of this Agreement, the terms of this Agreement shall prevail. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

In recognition of the obligations stated in this Agreement, the parties have executed this Agreement on the date indicated above.


"CONSULTANT"

  
\_\_\_\_\_  
Signature  
NATHAN B. Cherry  
\_\_\_\_\_  
Name (please print)  
\_\_\_\_\_  
Title

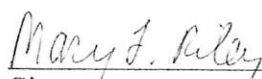
ATTEST:  
Office of the City Clerk

  
\_\_\_\_\_  
Margarita Campos, CMC, City Clerk

"CLIENT"

  
\_\_\_\_\_  
Signature  
Greg Herrmann  
\_\_\_\_\_  
Name (please print)  
Community Development Director  
\_\_\_\_\_  
Title

Approved as to Form:  
Amy Albano, City Attorney

By:   
\_\_\_\_\_  
Signature  
Mary F. Riley  
\_\_\_\_\_  
Name (please print)  
Sr. Assist. City Atty  
\_\_\_\_\_  
Title

## EXHIBIT A

### **SCOPE OF SERVICES**

Provide master planning and conceptual architectural design work for the Proposed Lundigan Park Community Center to include but not limited to:

- Provide planning and architectural design concepts;
- Meet with City Staff and Burbank Organizations for feedback on conceptual designs;
- Modify conceptual designs based on City/Organization feedback; and
- Develop preliminary schematic design as directed by City staff.

4/22/2011

Sent via email: [mleyland@ci.burbank.ca.us](mailto:mleyland@ci.burbank.ca.us)



Ms. Maribel Leyland  
City of Burbank

RE: Lundigan Youth Center

Maribel:

Thank you for the opportunity to submit our proposal for the ongoing work with the Lundigan Youth Center (LYC). You will find enclosed our project understanding, fee, and terms and conditions. Please let us know how we can be of assistance moving forward.

**PROJECT UNDERSTANDING**

The City of Burbank (COB) is looking to collaborate with RTKL to further refine our masterplanning and conceptual architecture work developed for the LYC. Please Refer to Attachment A for our *Scope of Services*.

**TIME SCHEDULE FOR SERVICES**

The assumption is that the initial effort will begin in April of 2011 and will continue on an as needed basis thru June of 2011.

**COMPENSATION FOR PROFESSIONAL ARCHITECTURAL SERVICES**

Because of the open ended nature of this assistance, we propose to conduct the above mentioned work on a time and materials basis per Attachment B – *Rate Table*, with an initial not-to-exceed limit of \$35,000.00. We will not exceed this limit without prior approval from the Owner. An appropriate adjustment to the not-to-exceed limit shall be made for substantial changes in the project schedule, project scope, or scope of services.

**REIMBURSABLE EXPENSES**

Reimbursable Expenses are defined as the direct expenses incurred in connection with this project. These expenses shall be billed and paid at cost. Reimbursable Expenses shall include, but are not limited to, the following:

- Telephone; Telecopy; Fax
- Postage and Delivery
- Reproductions; Photocopies, Printing and Computer Plotting. In-house plotting, copying, printing and faxing shall be billed in accordance with RTKL's Standard Document Pricing.
- Stats, Negatives, and Photography.
- Transportation and Travel; Airline transportation, lodging, meals, rental car, and other transportation related expenses
- Additional Expense over normal hourly rates for Overtime Work approved by the Owner in advance.
- Professional Renderings; Models except as included in this Proposal

**TERMS AND CONDITIONS**

RTKL and COB agree to the Terms and Conditions of Attachment C, or another mutually agreed upon form of agreement.

**AGREEMENT**

By signing below, COB agrees to the provisions of this proposal and agrees to pay RTKL in accordance with those terms stated. Authorizing services described in this proposal shall be construed to mean agreement with the provisions of this proposal.

We trust that this proposal meets your approval. If you have any questions, please don't hesitate to call.

Sincerely,

***AGREED:***

***RTKL Associates Inc.***

***the City of Burbank***



Nathan B. Cherry FAIA AICP LEED® AP  
Vice President

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachments:**

- A - Scope of Services
- B - Hourly Rates,
- C - Terms and Conditions

cc: Nate Cherry, Tanesha Carter, File 1100



***Attachment A  
Scope of Services  
RTKL Associates Inc.***



The scope will include

- Planning and Architectural Design specific to Lundigan Park Youth Center
- Meetings with City Staff and Burbank Organizations for feedback on conceptual design
- Modifying conceptual designs based on City/Organization Feedback specific to Lundigan Park Youth Center
- Develop Preliminary Schematic Design

EXHIBIT B

**SCHEDULE OF COMPENSATION**

Not to exceed \$15,446.81 based on the attached RTKL Professional Rate Schedule.



***Attachment B  
RTKL Associates Inc.  
Professional Rate Schedule***

***April 18, 2011***



Technical Assistant	\$ 50.00
Junior Staff/Project Administrator	\$ 70.00
Staff Architect/Engineer/Planner/Interiors	\$ 85.00
Architect/Engineer/Planner/Interiors	\$105.00
Designer	\$130.00
Associate: Project Designer/Manager	\$145.00
Principal: Project Designer/Manager	\$175.00
Vice President	\$225.00
Senior Vice President	\$250.00

Note:

- The above rates may include temporary personnel hired by RTKL on a contractual as needed basis.
- Rates Subject to Annual Adjustment

**ATTACHMENT C - TERMS AND CONDITIONS**  
**RTKL Associates Inc.**  
**April 18, 2011**



**Standard of Care**

RTKL shall perform its services consistent with the professional skill and care ordinarily provided by design professionals performing similar services as those of RTKL under this Agreement and practicing in the same or similar locality under the same or similar circumstances. RTKL shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**Payment for Services Provided**

Unless otherwise provided in this Agreement, compensation for Services and Expenses shall be due and payable within 30 days of invoice date. RTKL will invoice the Client on a monthly basis. Invoices over 45 days will be charged interest at the lesser of 1.5% per month or the maximum rate allowed by applicable law. If unpaid invoices become more than 45 days overdue, RTKL may, upon 7 days written notice to the Client, stop work until payment is received. In the event of non-payment, Client shall reimburse RTKL for any attorney fees incurred to collect the unpaid receivables.

**Retainers and future payments on this Project may be wired directly to:**

**For Projects located inside the USA.**

Bank of America, N.A.  
10 Light Street  
Baltimore, Maryland 21202  
**ABA** number: 0260-0959-3  
**ABA for ACH payments ONLY** 0520-0163-3

Account of: RTKL Associates Inc. Account No. 3930249666

**For Projects located outside the USA.**

Account Number: 3930249718  
Account of: RTKL International Ltd.  
SWIFT Code – BOFAUS3N

**Or Mailed to:**

RTKL Associates Inc.  
P.O. Box 402336  
Atlanta, Georgia 30384-2336  
USA

**International Tax Requirement where RTKL does not have a Permanent Establishment**

If the Project is not located inside the USA, then sales, value-added, income, withholding and similar government imposed fees and taxes on the provision of all master planning, architectural / design and engineering services are NOT included in RTKL's fees. Payment of such taxes to the governmental authorities shall be the sole responsibility of the Client and no deductions shall be made from RTKL's compensation on account of such fees and taxes. In the event taxes are assessed, the Client shall mail photocopies of all tax payment certificates to RTKL as evidence that all tax liabilities have been duly settled by the client. In addition:

1. All architectural and engineering design services will be performed in the United States. No services will be performed outside of the United States.
2. RTKL's compensation is for the provision of architectural design services. RTKL does not provide "technical assistance" nor render "construction services." No payments under this contract constitute royalties for the use of intangible property.

**RTKL Insurance**

RTKL will maintain commercial general liability, automobile liability, workers compensation and employee liability insurance reasonably necessary in connection with RTKL's performance of its services, and professional liability insurance with a coverage limit of not less than \$2 million per claim and annual aggregate while providing services for this Project and for three years thereafter.



#### **Limitation of Liability; Waiver of Consequential Damages**

RTKL's total liability to the Client for damages related to this Project shall not exceed RTKL's total fees for this Project or the annual aggregate limit of professional liability insurance RTKL is required to carry by these Terms and Conditions, whichever is greater.

RTKL and Client mutually waive all consequential damages arising out of the Project. This mutual waiver includes, but is not limited to, (i) damages incurred by the Owner for rental expense, liquidated damages, and loss of use income, profit and business, and (ii) damages incurred by RTKL for overhead and compensation of employees, loss of business and reputation, and loss of profit.

#### **Indemnification**

Each party agrees, to the fullest extent permitted by law, to indemnify and hold harmless the other party and its officers, directors and employees, against all damages, liabilities or costs, including reasonable attorneys' fees and other legal costs, to the extent caused by the indemnifying party's negligent acts, errors or omissions and those of its consultants or anyone for whom it is legally liable. The parties expressly agree that this indemnity provision does not include, and in no event shall either party be required to assume, under this indemnity provision or otherwise, any obligation or duty to defend the other against any claims, causes of action, demands, or lawsuits in connection with matters encompassed by this indemnity provision.

#### **Certificates**

RTKL shall execute certificates, and consents reasonably required to facilitate assignment to a lender, provided such do not require knowledge, services or responsibilities beyond the scope of this Agreement or which would result in RTKL assuming risks or liabilities beyond those otherwise assumed by RTKL under this Agreement.

#### **Use of RTKL's Documents**

Documents prepared by RTKL for this Project are intended for use solely with respect to this Project and RTKL shall retain all rights, including ownership and copyright. Provided Client remains current in its payment obligations to RTKL, Client is granted a non-exclusive license to use, copy and reproduce documents in connection with the construction, repair, maintenance, use and occupancy of, and publicity for, this Project. Other uses shall be negotiated separately. RTKL reserves the right to photograph the Project and to be identified as designers of the Project in all Project marketing materials.

#### **Electronic Files**

Client authorizes RTKL to distribute electronic files of Project to constructors and designers related directly to Project at RTKL's normal fees for such distribution.

#### **Claims and Disputes**

Any claim, dispute or other matter in question arising out of or related to this Agreement or Project shall be subject to non-binding mediation as a condition precedent to binding dispute resolution.

#### **Additional Services**

RTKL and its consultants will provide additional services when requested by the Client on a Lump Sum basis as mutually agreed by the Client and RTKL or, in the absence thereof, on an hourly basis, either according to the Hourly Rate Schedule included in this Agreement or, in the absence thereof, at RTKL's then current standard hourly billing rates. Directed changes to items previously approved will be considered Additional Services.

#### **Non-Discrimination and Other Client Requirements**

RTKL shall comply with all applicable anti-discrimination and equal employment laws and regulations and shall provide any necessary certificates to evidence such compliance.

#### **Miscellaneous**

RTKL has no responsibility (1) for detection or removal of hazardous substances; (2) for construction site safety and means and methods of construction used by the contractor; (3) to provide any service not approved by RTKL and set forth in writing. RTKL shall be entitled to rely upon the accuracy and completeness of all information provided by the Client. This Agreement is the entire agreement between the Client and RTKL and supersedes all prior negotiations, proposals and agreements. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or RTKL. The law of the Project location governs this Agreement.

RTKL shall not be required to sign and/or stamp construction documents or permit sets, or provide the Client with RTKL's final deliverables, until RTKL has received the Client's written acceptance of RTKL's proposal, of which these Terms and Conditions are a part, or the parties have executed another form of agreement in lieu of such proposal.

The Client shall coordinate RTKL's duties and responsibilities set forth in the contract for construction with RTKL's services set forth in these Terms and Conditions. The Client shall provide RTKL a copy of the executed agreement between the Client and contractor.

**Assignment**

Neither RTKL nor Client shall assign this agreement without written consent of the other party, not to be unreasonably withheld.

**Termination and Suspension**

Either party may terminate this Agreement at any time with or without cause by written notice. Termination shall be effective 7 days after date of notice. Upon termination, all invoices presented by RTKL for Services and Expenses for periods prior to the date of termination shall become immediately due and payable. Failure of Client to make payments to RTKL under this Agreement shall be cause for suspension and termination. In the event of a suspension of Services, RTKL shall have no liability for any damages to Client incurred because of such suspension.

If the Client suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. If the Client suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

If the services covered by this Agreement have not been completed within 3 (three) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be considered an additional service.

**End of Terms and Conditions**

